No. 23

In the Supreme Court of the United States

OCTOBER TERM, 1941

THE UNITED STATES OF AMERICA, AS GUARDIAN OF THE INDIANS OF THE TRIBE OF HUALPAI IN THE STATE OF ARIZONA, PETITIONER

v.

SANTA FE PACIFIC RAILROAD COMPANY, A CORPORATION, RESPONDENT

APPENDIX TO BRIEF FOR THE UNITED STATES

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I. STATUTES AND TREATIES

A. INDIAN TRADE AND INTERCOURSE ACT OF JUNE 30, 1834

Pertinent provisions of the Indian Trade and Intercourse Act of June 30, 1834 (4 Stat. 729), are:

> SEC. 9. *And be it further enacted,* That if any person shall drive, or otherwise convey any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, such person shall forfeit the sum of one dollar for each animal of such stock.

SEC. 10. *And be it further enacted,* That the superintendent of Indian affairs, and Indian agents and subagents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President of the United States is authorized to direct the military force to be employed in such removal.

SEC. 11. *And be it further enacted,* That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by marking trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.

SEC. 12. *And be it further enacted,* That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution. And if any person, not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation or tribe of

Indians, for the title or purchase of any lands by them held or claimed, such person shall forfeit and pay one thousand dollars: *Provided, nevertheless,* That it shall be lawful for the agent or agents of any state who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner or commissioners [731] of the United States appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claim to lands within such state, which shall be extinguished by treaty.

* * * * *

SEC. 22. *And be it further enacted,* That in all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

SEC. 23. *And be it further enacted,* That it shall be lawful for the military force of the United States to be employed in such manner and under such regulations as the President may direct, in the apprehension of every person who shall or may be found in the Indian country, in violation of any of the provisions of this act, and him immediately to convey from said Indian coun-

try, in the nearest convenient and safe route, to the civil authority of the territory or judicial district in which said person shall be found, to be proceeded against in due course of law; and also, in the examination and seizure of stores, packages, and boats, authorized by the twentieth section of this act, and in preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law: *Provided*, That no person apprehended by military force as aforesaid shall be detained longer than five days after the arrest and before removal. And all officers and soldiers who may have any such person or persons in custody shall treat them with all the humanity which the circumstances will possibly permit; and every officer or soldier who shall be guilty of maltreating any such person while in custody shall suffer such punishment as a court martial shall direct.

* * * * *

B. PRE-EMPTION ACT OF SEPTEMBER 4, 1841

The pertinent provisions of the act of September 4, 1841 (5 Stat. 453, 455, 456), are:

SEC. 10. *And be it further enacted*, That from and after the passage of this act, every person being the head of a family, or widow, or single man, over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of

intention to become a citizen, as required by the naturalization laws, who since the first day of June A. D. eighteen hundred and forty, has made or shall hereafter make a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been, or shall have been, surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is hereby, authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: * * * no lands included in any reservation, by any treaty, law, or proclamation of the President of the United States, or reserved for salines, or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act * * *.

C. TREATY OF GUADALUPE HIDALGO

The pertinent provisions of the Treaty of Guadalupe Hidalgo, February 2, 1848 (9 Stat. 922, 929, 930), are:

> ART. IX. Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.
>
> * * * * *
>
> ART. XI. Considering that a great part of the territories which, by the present treaty, are to be comprehended for the future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the Government of the United States, and whose incursions within the territory of Mexico would be prejudicial in the extreme, it is solemnly agreed that all such incursions shall be forcibly restrained by the Government of the United States whensoever this may be necessary; and that when they can-

not be prevented, they shall be punished by the said Government, and satisfaction for the same shall be exacted—all in the same way, and with equal diligence and energy, as if the same incursions were meditated or committed within its own territory, against its own citizens.

* * * * *

For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the Government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said Government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obliged themselves to restrain.

D. ACT OF FEBRUARY 27, 1851

The pertinent provisions of the act of February 27, 1851 (9 Stat. 574), are:

SEC. 7. *And be it further enacted,* That all the laws now in force, regulating trade

and intercourse with the Indian tribes, or such provisions of the same as may be applicable, shall be, and the same are hereby, extended over the Indian tribes in the Territories of New Mexico and Utah.

* * * * * *

E. DONATION ACT OF JULY 22, 1854

The pertinent provisions of the act of July 22, 1854 (10 Stat. 308), are:

An Act to establish the offices of Surveyor General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, by and with the advice and consent of the Senate, shall be, and he is hereby, authorized to appoint a Surveyor General for New Mexico, whose annual salary shall be three thousand dollars, and whose power, authority, and duties shall be the same as those provided by law for the Surveyor General of Oregon; * * *

SEC. 2. *And be it further enacted,* That, to every white male citizen of the United States, or every white male above the age of twenty-one years who has declared his intention to become a citizen, and who was residing in said Territory prior to the first day of January, eighteen hundred and fifty-three, and who may be still residing there, there shall be, and hereby is, donated one

quarter section, or one hundred and sixty acres of land. And to every white male citizen of the United States, or every white male above the age of twenty-one years, who has declared his intention to become a citizen, and who shall have removed or shall remove to and settle in said Territory between the first day of January, eighteen hundred and fifty-three, and the first day of January, eighteen hundred and fifty-eight, there shall in like manner be donated one quarter section, or one hundred and sixty acres, on condition of actual settlement and cultivation for not less than four years: *Provided, however,* That each of said donations shall include the actual settlement and improvement of the donee, and shall be selected by legal subdivisions, within three months after the survey of the land where the settlement was made before the survey; and where the settlement was made after the survey, then within three months after the settlement has been made; and all persons failing to designate the boundaries of their claims within that time, shall forfeit all right to the same.

SEC. 3. *And be it further enacted,* That, on proof of the settlement and cultivation required by this act, to the satisfaction of the surveyor general, or other officer designated by law for that purpose, subject to the supervision of the Secretary of the Interior, a certificate shall be issued to the party entitled, on presentation of which, if

approved by the Secretary of the Interior, a patent shall issue thereon:

SEC. 4. *And be it further enacted,* That none of the provisions of this act shall extend to mineral or school lands, salines, military or other reservations, or lands settled on and occupied for purposes of trade and commerce, and not for agriculture, and all legal subdivisions settled on and occupied, in whole or in part, for purposes of trade and commerce, and not for agriculture, shall be subject to the provisions of the act of twenty-third of May, eighteen hundred and forty-four, in relation to town sites on the public lands, whether so settled and occupied before or after the survey of said lands, except that said lands shall be donated instead of being sold.

* * * * *

SEC. 7. *And be it further enacted,* That any of the lands not taken under the provisions of this act shall be subject to the operation of the Preemption Act of fourth September, eighteen hundred and forty-one, whether settled upon before or after the survey; and, in all cases where the settlement was made before the survey, the settler shall file his declaration within three months after the survey is made and returned; and any person claiming a donation under this act shall be permitted to enter the land claimed by him at any time prior to the four years' occupancy and cultivation required, by paying therefor at the

rate of one dollar and twenty-five cents per acre, and proving occupancy and cultivation up to the time of such payment.

SEC. 8. *And be it further enacted,* That it shall be the duty of the surveyor general, under such instructions as may be given by the Secretary of the Interior, to ascertain the origin, nature, character, and extent of all claims to lands under the laws, usages, and customs of Spain and Mexico; and, for this purpose, may issue notices, summons witnesses, administer oaths, and do and perform all other necessary acts in the premises. He shall make a full report on all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, of eighteen hundred and forty-eight, denoting the various grades of title, with his decision as to the validity or invalidity of each of the same under the laws, usages, and customs of the country before its cession to the United States; and shall also make a report in regard to all pueblos existing in the Territory, showing the extent and locality of each, stating the number of inhabitants in the said pueblos, respectively, and the nature of their titles to the land. Such report to be made according to the form which may be prescribed by the Secretary of the Interior; which report shall be laid before Congress for such action thereon as may be deemed just and proper, with a view to confirm *bona fide* grants, and give full effect to

the treaty of eighteen hundred and forty-eight between the United States and Mexico; and, until the final action of Congress on such claims, all lands covered thereby shall be reserved from sale or other disposal by the government, and shall not be subject to the donations granted by the previous provisions of this act.

* * * * *

SEC. 10. *And be it further enacted,* That the President of the United States shall be and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, a Surveyor-General for the Territories of Nebraska and Kansas, who shall locate his office at such place as the President of the United States shall from time to time direct, and whose duties, powers, obligations and responsibilities and compensation shall be the same as those of the Surveyor-General of Wisconsin and Iowa, and who shall be allowed the same amount for office rent, fuel, incidental expenses, and clerk hire, as is allowed to said Surveyor-General of Wisconsin and Iowa.

* * * *

SEC. 12. *And be it further enacted,* That all the lands to which the Indian title has been or shall be extinguished within said Territories of Nebraska and Kansas, shall be subject to the operations of the Preemption Act of fourth September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein men-

tioned: *Provided, however,* That where unsurveyed lands are claimed by preemption, notice of the specific tracts claimed shall be filed within three months after the survey has been made in the field, and on failure to file such notice or to pay for the tracts claimed before the day fixed for the public sale of the lands by the proclamation of the President of the United States, the parties claiming such lands shall forfeit all right thereto: *Provided,* said notices may be filed with the Surveyor-General, and to be noted by him on the township plats, until other arrangements shall have been made by law for that purpose.

SEC. 13. *And be it further enacted,* That the public lands in the Territory of Nebraska, to which the Indian title shall have been extinguished, shall constitute a new land district to be called the Omaha District; and the public lands in the Territory of Kansas, to which the Indian title shall have been extinguished, shall constitute a new land district, to be called the Pawnee District: the officers for each of which districts shall be established at such points as the President may deem expedient * * *.

F. ACT OF MARCH 3, 1865

The pertinent provisions of the act of March 3, 1865 (13 Stat. 541, 559), are:

All that part of the public domain in the Territory of Arizona, lying west of a direct line from Half-Way Bend to Corner Rock

on the Colorado River, containing about seventy-five thousand acres of land, shall be set apart for an Indian reservation for the Indians of said river and its tributaries.

G. RAILROAD GRANT ACT OF JULY 27, 1866

The pertinent provisions of the act of July 27, 1866 (14 Stat. 292), are:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That John B. Brown, * * * and all such other persons who shall or may be associated with them, and their successors, are hereby created and erected into a body corporate and politic, in deed and in law, by the name, style, and title of the "Atlantic and Pacific Railroad Company," and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and have a common seal. And said corporation is hereby authorized and empowered to lay out, locate, and construct, furnish, maintain, and enjoy, a continuous railroad and telegraph line, with the appurtenances, namely: Beginning at or near the town of Springfield, in the State of Missouri, thence to the western boundary line of said State, and thence by the most eligible railroad route as shall be determined by said company to a point on the Canadian River, thence to the town of Al-

buquerque, on the River Del Norte, and thence, by way of the Agua Frio, or other suitable pass, to the head-waters of the Colorado Chiquito, and thence, along the thirty-fifth parallel of latitude, as near as may be found most suitable for a railway route, to the Colorado River, at such point as may be *be* selected by said company for crossing; thence by the most practicable and eligible route, to the Pacific. * * *

SEC. 2. *And be it further enacted,* That the right-of-way through the public lands be, and the same is hereby, granted to the said Atlantic and Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed; and the right, power, and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road, material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary grounds for station buildings, workshops, depots, machine-shops, switches, sidetracks, turntables, and water stations; and the right-of-way shall be exempt from taxation within the Territories of the United States. The United States shall extinguish, as rapidly as may be consistent with public policy and the welfare of the Indians, and only by their

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voluntary cession, the Indian title to all lands falling under the operation of this act and acquired in the donation to the road named in the act.

SEC. 3. *And be it further enacted,* That there be, and hereby is, granted to the Atlantic and Pacific Railroad Company, its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific Coast, and to secure the safe and speedy transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway and its branches, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever, on the line thereof, the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from preemption or other claims or rights, at the time the line of said road is designated by a plat thereof, filed in the office of the commissioner of the general land office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or preempted, or otherwise disposed of, other

lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections, and not including the reserved numbers: *Provided,* That if said route shall be found upon the line of any other railroad route, to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: *Provided further,* That the railroad company receiving the previous grant of land may assign their interest to said "Atlantic and Pacific Railroad Company," or may consolidate, confederate, and associate with said company upon the terms named in the first and seventeenth sections of this act: *Provided further,* That all mineral lands be, and the same are hereby, excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands in odd-numbered sections nearest to the line of said road, and within twenty miles thereof may be selected as above provided: *And provided further,* That the word "mineral," when it occurs in this act, shall not be held to include iron or coal: *And provided further,* That no money shall be drawn from the treasury of the United

States to aid in the construction of the said "Atlantic and Pacific Railroad."

SEC. 4. *And be it further enacted*, That whenever said Atlantic and Pacific Railroad Company shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, who shall be paid a reasonable compensation for their services by the company, to be determined by the Secretary of the Interior; and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial, and workmanlike manner, as in all other respects required by this act, the commissioners shall so report under oath, to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands situated opposite to and coterminous with said completed section of said road. And from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as aforesaid, and so on as fast as every twenty-five miles of said road is completed as aforesaid.

* * * * *

SEC. 6. *And be it further enacted,* That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry, or preemption, before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting preemption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

SEC. 7. *And be it further enacted,* That the said Atlantic and Pacific Railroad Company be, and is hereby, authorized and empowered to enter upon, purchase, take, and hold any lands or premises that may be necessary and proper for the construction and working of said road, not exceeding in width one hundred feet on each side of the line of its railroad, unless a greater width be required for the purpose of excavation or embankment; and also any lands or premises that may be necessary and proper for

turn-outs, standing places for cars, depots, station houses, or any other structures required in the construction and working of said road. * * *

SEC. 8. *And be it further enacted,* That each and every grant, right, and privilege herein are so made and given to and accepted by said Atlantic and Pacific Railroad Company, upon and subject to the following conditions, namely: That the said company shall commence the work on said road within two years from the approval of this act by the President, and shall complete not less than fifty miles per year after the second year, and shall construct, equip, furnish, and complete the main line of the whole road by the fourth day of July, anno Domini eighteen hundred and seventy-eight.

SEC. 9. *And be it further enacted,* That the United States make the several conditional grants herein, and that the said Atlantic and Pacific Railroad Company accept the same, upon the further condition that if the said company make any breach of the conditions hereof, and allow the same to continue for upwards of one year, then, in such case, at any time hereafter, the United States may do any and all acts and things which may be needful and necessary to insure a speedy completion of the said road.

* * * * *

SEC. 12. *And be it further enacted,* That the acceptance of the terms, conditions, and impositions of this act by the said Atlantic

and Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be deposited in the office of the Secretary of the Interior.

* * * * *

SEC. 17. *And be it further enacted,* That the said company is authorized to accept to its own use any grant, donation, loan, power, franchise, aid, or assistance which may be granted to or conferred on said company by the Congress of the United States, by the legislature of any State, or by any corporation, person, or persons, or by any Indian tribe or nation through whose reservation the road herein provided for may pass; and said corporation is authorized to hold and enjoy any such grant, donation, loan, power, franchise, aid, or assistance, to its own use, for the purpose aforesaid: *Provided,* That any such grant or donation, power, aid, or assistance from any Indian tribe or nation shall be subject to the approval of the President of the United States.

H. ACT OF JULY 15, 1870

The pertinent provisions of the act of July 15, 1870 (16 Stat. 291, 304), are:

For surveying the public lands in Arizona, at rates not exceeding fifteen dollars

per lineal mile for standard lines, twelve dollars for township, and ten dollars for section lines, ten thousand dollars: *Provided,* That it shall be the duty of the surveyor-general of Arizona, under such instructions as may be given by the Secretary of the Interior, to ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico; and for this purpose he shall have all the powers conferred, and shall perform all the duties enjoined upon the surveyor-general of New Mexico by the eighth section of an act entitled "An act to establish the offices of surveyor-general of New Mexico, Kansas, and Nebraska, to grant donations to actual settlers, and for other purposes," approved July twenty-second, eighteen hundred and fifty-four, and his report shall be laid before Congress for such action thereon as shall be deemed just and proper.

I. ACT OF FEBRUARY 20, 1925

The act of February 20, 1925 (43 Stat. 954), provides:

CHAP. 273. An Act To provide for exchanges of Government and privately owned lands in the Walapai Indian Reservation, Arizona.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the

Secretary of the Interior is hereby authorized, in his discretion, under rules and regulations to be prescribed by him, to accept reconveyances to the Government of privately owned and State school lands and relinquishments of any valid filings, under the homestead laws, or of other valid claims within the Walapai Indian Reservation in Mohave and Coconino Counties, Arizona, and to permit lieu selections within the boundaries of the said reservation by those surrendering their rights so that the lands retained for Indian purposes may be consolidated and held in a solid area so far as may be possible: *Provided,* That the title or claim of any person or company who refuses to reconvey to the Government shall not be hereby affected.

II. ADMINISTRATIVE AND HISTORICAL MATERIAL TENDING TO SHOW THAT WALAPAI MAINTAINED PERMANENT SETTLEMENTS, PRACTICING AGRICULTURE, AND MAKING IMPROVEMENTS UPON THE LAND THEY OCCUPIED

A. CIVILIZED CHARACTER

"Many of the Mohaves and the Hualapais have hitherto been living quietly in the vicinity of Fort Mohave and on the bottom lands along the Colorado River, raising food for themselves and for sale, and procuring wood for the steamers plying on the river, transporting the supplies for the government, and the miners and other settlers in the Territory." [*Letter of Assistant Adjutant General John P. Sherburne to General Gregg,*

Commanding Headquarters, District of Prescott, dated May 18, 1867, at San Francisco.]

B. PERMANENCE OF ABODE

"*Villages*

"Possible village sites were definitely limited in number because of the prevailing scarcity of water. Villages must have been maintained in the same places for generations; there was no chance of moving the site at will.

"The village was made up of a number of families, each maintaining its own establishment. For each there was the winter house, occupied only during the winter; a brush shelter for summer; and another structure with a roof constructed to withstand the storms of fall. Since each family was composed of parents, children, and grandparents, there were frequently additional sleeping quarters for the children. In general, the family did not maintain its own sudatory or sweat-house, one sufficient for the whole village.

* * * * *

"The exceptions to this general rule of small villages seem invariably to have been located at sites of abundant water. Perhaps, then, it is fair to generalize and say that water, more than any other factor, dictated the distribution of population. * * * It is considered that prior to 1880 the distribution of the Walapai was much as it had been for the period previous to the coming

of the white men." [*F. B. Kniffen, Geography, in Walapai Ethnography (Memoirs of American Anthropological Ass'n, No. 42, 1935), pp. 29, 44–45.*]

"Land is claimed by families or settlements of related families. Relatives and friends visit for months at a time, using the land as though it were their own. Hunting privileges are seldom denied anyone; and, except in times of shortage, food gathering is permitted in exchange for nominal gifts. Permission is never asked by relatives or denied to friends, but with others there may be some question.

"Place of birth and early possession constituted the principal claims to land. These rights were inherited by members of one's family; but in case of no heirs, friends or neighbors laid claim. Mountains, hills, springs, and other natural features marked the boundaries; sometimes stakes and fences separated garden plots. The larger claims varied greatly in size, and much uninviting tribal land was unclaimed by any family or group. Instances are noted in which farm land was sold for a consideration." [*M. A. Mook, Property, in Walapai Ethnography, pp. 160–161.*]

"* * * A man claimed the land of his birthplace and all that was claimed by his parents. His birthplace was probably, in the majority of cases, the identical spot on which his father and grandfather had lived, so that from generation to generation holdings did not materially increase. * * *

"* * * Inheritance of lands seems to have existed, but it was so linked with the strong tradition for men to live and die in the locality in which they were born, that a strict case of land inheritance is difficult to distinguish, except in the case of farm land." [*G. MacGregor, Inheritance, in Walapai Ethnography, p. 163.*]

"*Birthplace*

"In regard to 123 Walapai born before 1900, we secured data as to the birthplace of the individual and of his father and mother.

	Place of birth same as—				
	Father's	Mother's	Both	Neither	Total
Born before 1870	18	12	14	7	51
Born 1870-79	27	8	6	11	52
Born 1880-89	9	4	1	6	20
Total	54	24	21	24	123
	In percentages				
Born before 1870	35	24	27	14	
Born 1870-79	52	15	12	21	
Born 1880-99	45	20	5	30	

"The two older groups represent essentially native conditions, undisturbed by railroad or reservation. It appears that three Walapai out of five were born at the village or spring where their fathers had been born. One-third of these marriages or one-fifth of the total were endogamous—husband and wife from the same settlement. Only once out of five times was the husband living with

his wife's kin when their children were born. The one-fifth of births away from both parents' homes may be accounted for by permanent shifts of residence, visits, and especially seasonal travel in search of food. That this proportion was no larger emphasizes the strength of locality attachment of the Walapai." [*F. B. Kniffen, S. Mekeel, and A. L. Kroeber, Vital Statistics, in Walapai Ethnography, pp. 292, 293.*] [1]

C. AGRICULTURE

"The Indians of this Territory may for all practicable purposes be fairly divided into two distinct Sections or societies by an imaginary line beginning at the Southern boundary of Arizona where the 111° of Long't intersects the same, thence North to the Gila River, thence by the Pima Reservation down said Gila to the 113th degree of Long't thence due North to the boundary of Utah.

[1] For additional evidence of permanency of Indian settlements see reports of destruction of Walapai rancherias by United States Army, contained in reports of Army officers dated November 10, 1867 (Walapai Papers, p. 48), December 7, 1867 (Walapai Papers, p. 48), January 17, 1868 (Walapai Papers, p. 50), January 20, 1868 (Walapai Papers, p. 53), and December 17, 1868 (Walapai Papers, pp. 80–82); report of Lt. Wilson, dated November 18, 1879 (Walapai Papers, pp. 126–127). References to "settlements" and "villages" are also found in the Report upon the Colorado River of the West, by Lt. Joseph C. Ives, under the Direction of the Office of Explorations and Surveys, by Order of the Secretary of War (Explorations in 1857 and 1858, Ch. VII, Walapai Papers, p. 16).

"All the Territory East of this line, excepting that of the Moqui Pueblos, is occupied by roving and robbing Indians—by the various tribes of the Apaches and a few unsubdued Navajoes, under Miquelito North of the little Colorado. These, like the Bedoins of the desert, are the terror of the surrounding Indians and the unceasing, implacable enemy to civilization, cruel, cowardly, and few in numbers, they have nevertheless successfully defied the advance of Spanish and Mexican power and civilization for centuries, and that of the United States since the acquisition of the Territory. Their very insignificant number, scattered over a vast mountainous country, has to them proved to be strength.

"The section West of this line is occupied by tribes either kindred in origin, or at least affiliated by intermarriage, frequent intercourse, barter, and similar agricultural pursuits.

"Of common (supposed Aztec) origin are the Pimas, Papagos, Moquis, Mohaves, & Yumas. Affiliated with them are the Maricopas, Hualapais, and Yavapais: of the Yavapais but little is known as yet; they seem to be few in numbers and vegetate in the deep and dismal, but sublime chasms and canyons of the Upper Colorado.

* * * * *

"The Yavapais and Hualapais infest the metalliferous mountain ranges and intervening plains for 100 miles East of the Section occupied by the former that is the section East of the middle Colo-

rado. They in certain seasons cultivate small spots of ground on the edges of the Colorado, or on those of a few little inland streams. If the grounds of the Papagoes cannot be relied upon for the annual crops on acc't of the uncertainty of rains, those belonging to the four tribes, last mentioned, share the same fate to a great extent, notwithstanding that they are situated on the margin of one of the great Rivers of America. The reason for this is to be looked for in the Physical and geological character of the Colorado Country." [*Report of Herman Ehrenburg, agent, dated January 11, 1866, to Commissioner of Indian Affairs.*]

"They [the Walapai, etc.] cultivate the bottom lands of the Colorado river, where an overflow affords sufficient moisture; the failure of an overflow, which sometimes happens, is considered a great calamity and breeds a famine." [*Report of Superintendent Charles D. Poston, in Annual Report of Commissioner of Indian Affairs,* 1864, p. 156.]

"The Walapai raised three colors or varieties of maize, four of beans, pumpkins (and squash?), sunflowers, watermelons and musk melons, peaches, and perhaps pears and apricots.

"Planting was without ceremony. A square foot or so of soil was loosened with a stick and a small wall was built around this to retain water from the irrigation ditch. In other places, where the ground was well watered before planting, the sower stuck his digging stick about six inches into the

ground and, making small holes "a foot and a half" apart, dropped five or six seeds in each. The holes were in rows "two or three feet" apart. Weeds were pulled out by hand.

"Ditches were run from the creek or spring into the fields, where they were either tapped by smaller ditches, or the water was allowed to run freely over the ground. This was done before planting and again when the corn had started to grow. The ditches were dug with a stick or a small hand shovel (spoon?) of split mountain sheep horn.

"It is said that formerly all planting and care of the fields was the work of men: the women harvested. But now the women help in the digging and cultivation. At harvest a farmer gave a feast to which his relatives and friends came. What was not eaten was dried and stored in skin bags and hung away for winter use.

"Some fields were inherited; others bought with buckskin or Navaho blankets.

"The fields, where not marked by the ditches, had corner stakes (?), or they were fenced with dead brush." [*G. MacGregor, Agriculture, in Walapai Ethnography, p. 58.*][2]

[2] Additional references to agriculture and particularly to the raising of corn, beans, and melons are contained in the following materials:

Letter dated April 10, 1885, at Hackberry, A. T., by Charles A. Harvey, Jr., Additional Farmer in Charge of Hualapai Indians, to Commissioner of Indian Affairs.

Letter of Jno. S. Mason, Colonel, 9th Infantry, Whipple Barracks, Prescott, Arizona, to the Assistant Adjutant Gen-

"25th: [March 1863] Left Camp at daylight, by 9 A. M. the country again widened out into a broad, well-watered, arable Valley, being a continuation of Hualapais Valley between the Hualapais Mountains on the West and the Aquarius Ranges on the East. Here the Indians had evidently lived in large numbers during the winter, and cultivated the land to a considerable extent. I destroyed by digging them up two Corn fields and one wheat field. They had evidently not been planted more than a week as the seeds had just began to Sprout. I destroyed seven recently abandoned Rancherias, containing 23 Wickiups." [*Report to Assistant Adjutant General J. P. Sherburne of destruction of Walapai rancherias, dated April 21, 1868. W. P., p. 70.*]

"The Rancheria contained, which we captured or destroyed, One Horse, 50 Buckskins, 12 Bows, and over 100 arrows, 1 Pistol, Powder, and Bullets, 1 axe, 200 Buckets, containing provisions, 25 pairs moccasins, 3 saddles, 12 water jugs, number of Bags containing seeds, corn, Pinion nuts, with several hundred lbs. prepared muscal, together with the most complete lot of minor articles, very valu-

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eral, Department of Arizona, Whipple Barracks, Arizona, dated September 7, 1886.

Letter of Captain F. E. Pierce to Assistant Adjutant General, Department of Arizona, dated September 28, 1884 (W. P., p. 161).

able to them, that I have ever seen in an Indian camp." [*Report to Assistant Adjutant General J. P. Sherburne of destruction of Walapai rancherias, dated December 17, 1868. W. P., p. 82.*]

"The Hualapais are located chiefly in the Cerbat and Aquarius ranges and on the eastern slope of the Black Mountains, and they range through Hualapais, Yampai, and Sacramento Valleys from Williams Fork on the south to Diamond River on the north.

"They at present cultivate but little, living principally by the chase and such roots, acorns, seeds, &c as they are able to gather. They are very poor at present and have but little stock or property, as the hot pursuit of the troops frequently caused them to abandon it in order to consult their own safety and that of their families." [*Report of General Thomas C. Devin, dated April 1869. W. P., p. 91.*] [3]

E. USE OF WATER

"Referring to my letter of the 19th instant, in relation to the Hualpai Indians in Arizona, I have to state, in addition to the above-mentioned report, that these Indians are not on any reservation, nor in charge of an Agent of this Office, but are living

[3] For additional material on the destruction of Walapai rancherias, the driving out of Indian farmers, and the destruction of corn fields, wheat fields, and the seizure of seed, see p. 27, fn. 1, *supra*.

at or near Hackberry, Arizona, without being under control of the Department.

"With reference to railroad parties appropriating water to the injury of these Indians, I have to say that it is a well settled principle of law that the first occupant of running water, for a beneficial purpose has a good title to it, and that neither the owner of the land below can dam or pen back the water, nor the owner of the land above divert it to his prejudice.

"In this, as in other cases of injuries to real property, possession is a good title against a wrongdoer. (Angell on Water courses 226.)

"It is true that these Indians have no title to the lands occupied by them, but no doubt they have been in possession of them for a great many years, and the right to the use of the water sufficient for their necessities would inure to them by right of prescription.

"I would therefore suggest that the Hon. Secretary of War be requested to direct the proper military officer to notify the railroad parties referred to, that the Indians have the prior right to the water, and that it must not be diverted to the injury of the Indians." [*Letter of Commissioner of Indian Affairs to Secretary of Interior dated July 22, 1881.*]

F. FIXED LOCATION OF RANCHERIAS

"Boundaries and Neighbors

"The centers of population, the largest villages, lay fairly close to the center of Walapai territory. On all sides there was a considerable strip of territory before the villages of other tribes were reached. The sites favorable to permanent habitation lay fairly bunched, surrounded by country decidedly inferior in resource.

* * * * *

"A brief description of each of the seven divisions may serve to bring out certain of their characteristics not indicated on the map.

"*Mata'va-kopai* (*north people*).—This is a name applying to the group holding the northwestern division of Walapai territory. The principal village site was Hadu'ba (Clay springs), which lies at the top of the escarpment formed by the Grand Wash cliffs. All the permanent villages lay along the edge of the escarpment. There were large perennial springs and easily defensible sites.

* * * * *

"This group controlled one of the few sites in Walapai territory where agriculture could be, and was, carried on. This site lay in the canyon floor at Matuwi'tite or Matewi'tide, the "Meriwitica" of the maps.

"*Soto'ive-kopai* (*west people*).—This group held the Cerbat mountains, and the country west to the

Colorado. Hamte' was the principal village, near a spring at the eastern base of the mountains. Most of the other larger villages lay to the north or south of Hamte' in similar situations. Several villages of lesser importance were established to the west across the Detrital-Sacramento valley, along the crest and eastern margin of the Black range.

* * * * *

"*Ko'o'u-kopai* (*mesa people*).—The situation of this group was similar to the first. The principal villages, of which Hel (Milkweed springs) was the largest, lay on the plateau where it slopes from the escarpment toward the Colorado. Included in this group were several outlying villages, not on the plateau, but situated along Truxton canyon or in the hills which form the divide between the Sandy and Hualpai valley. Most of the sites were determined by springs which lie at the heads of canyons leading to the Colorado.

* * * * *

"*Nyav-kopai* (*east people*).—* * * One main village, Haketakwi'va, lay near the present town of Peach springs, the other, Haksa' (Pine springs), on the plateau above the Aubrey cliffs.

* * * * *

"*Hakia'tce-pai* (?) *or Talta'l-kuwa* (*cane?*).—This group inhabited a half-dozen villages clustered about the Mohon mountains. Hakia-tce was the principal village; Wi-ka-tava and Tha'va-

ka-lavala'va were next in importance. The others were all much smaller.

* * * * *

"*Kwe'va-kopai* (*south people*).—Of all the Walapai this was the only group which dwelt out in the valley flat away from the mountains. Hapu'k, the principal settlement, was strung along the perennial portion of the Big Sandy, from Wickiup down to a point about two miles north of Signal. All the other settlements were located about springs, and were much smaller in size.

* * * * *

"At the present time the Walapai of the Sandy practice a primitive agriculture. In Patches, conditions appear to be quite favorable. There is sufficient water; the soil tends to a sandy character, easily workable; irrigation involves no difficult engineering problems. Reports vary as to the time of introduction of agriculture into the Sandy area. Agriculture could not have been the dominant economic pursuit, for if it had been there would have been more agreement among the several informants." [*F. B. Kniffen, Geography, in Walapai Ethnography, pp. 38–43.*]

"I sent for Mr. Charles Spencer, who from his long residence amongst these Indians speaks their language and knows their habits and wants, and learned from him that the Hualpais are divided into some twenty-six bands. Each band occupies a separate section of country north of and both

east and west of Prescott, where they have lived for many years, with the exception of some two hundred and fifty, who reside on the present reservation during the summer months where they can raise enough corn, beans, and melons for immediate consumption."[4] [*Letter of Jno. S. Mason, Colonel, 9th Infantry, Whipple Barracks, Prescott, Arizona, to the Assistant Adjutant General, Department of Arizona, Whipple Barracks, Arizona, dated September 7, 1886.*]

III. ADMINISTRATIVE AND HISTORICAL MATERIAL TENDING TO SHOW THAT THE CLAIM OF THE WALAPAI TO POSSESSION OF LANDS INVOLVED IN THIS SUIT WAS A MATTER OF PUBLIC KNOWLEDGE

CONTRACT BETWEEN WALAPAI INDIANS AND MOHAVE AND PRESCOTT TOLL ROAD COMPANY, JULY 15, 1865

"This Indenture, made the Fifteenth day of July in the year of our Lord One Thousand Eight hundred and Sixty-five, Between the Tribe of Indians called the Wallipies, represented by their Chiefs Wauba Yuma, Hitchie Hitchie and Sherum, parties of the first part, and the Mohave and Prescott Toll Road Company of Arizona Territory parties of the second part, Witnesseth that the said parties of the first part for and in consideration of a certain lot of Merchandise of the value of One Hundred and fifty Dollars to them

[4] To the effect that white settlements in 1873 were springing up around the original Indian settlements, see Annual Report of Commissioner of Indian Affairs, for 1873, at p. 284.

in hand paid, the receipt whereof is hereby acknowledged, have this day granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said parties of the second part, the right of travelling through their country, the same being the road as located and worked by the said parties of the second part and now travelled by the public, commencing at the Town of Hardyville and running to the line of the Wallipi Country near the Juniper Pass. The conditions of this contract is such that the said Toll Road Company and their successors shall have the right to maintain a road and that the public shall travel over the said road free from molestation by the Indians and that said parties of the Second part shall have the right to build houses at the several watering places on the road and hold sufficient ground for stations and shall have the right to fence and improve said ground and said parties of the second part shall have the right to graze their stock along the road and also to cut Timber, use water and make use of whatever is necessary for the convenience of the travelling public. Whenever Stock strays the parties of the first part if possible are to find and return said stock and shall receive therefor One dollar per head or its equivalent as they may choose. In Witness Whereof, said parties of the first and second part have hereunto set their hands and seals the day and year first above written. This instrument is

made through the advice of G. W. Leihy, Superintendent of Indian Affairs in Arizona.

"WAUBA (his x mark) YUMA. (Seal)
"HITCHIE (his x mark) HITCHIE. (Seal)
"SHERUM (his x mark). (Seal)

"WM. H. HARDY,
"Acting Agent for the Mohave and Prescott Toll Road Company."

[*W. P., pp. 34–35.*]

"The areas inhabited by, and known as the country of, the Shoshones, Pah-Utes, Chemehuevis, Utes, Mohaves, Seviches, Hualapais, Apache-Mojaves, Cosninas, Apache, (Tontos, Pinals, Coyoteros and Arivapas) &c., have been pretty accurately determined, and will be mapped out." [*Preliminary Report: Explorations in Nevada and Arizona, War Department, 1871, by Daniel W. Lockwood, First Lieutenant of Engineers, approved by George M. Wheeler, Corps of Engineers, at page 27.*]

"The following remarks are submitted as the result of my observations and inquiries among the Hualapai Indians.

"Their Country is bounded on the East by Cataract Creek, on the North and West by the Colorado river, and on the South by the Big Sandy and Bill Williams Fork.

"Within these limits, however, is included the Mojave Country along the Colorado river from Hardyville down, which the Hualapais don't

claim." [*Letter of Lieutenant George S. Wilson, to Assistant Adjutant General, Department of Arizona, dated November 18, 1879.* W. P., p. 126.]

"* * * for most of the Walapai boundary the line might well represent the areal limit of utilization by the neighboring tribes.

"The steep-walled, forbidding gorge of the Colorado formed the boundary to north and west, toward the Paiute. At the point where the Colorado enters Mohave valley the boundary between Walapai and Mohave fell back to the first range, east of the river. The Yavapai held Bill Williams fork, and its continuation, the Santa Maria, while to the north the boundary passed through the dry plain between the first and second escarpments of the plateau. The easternmost village of the Walapai lay a short distance east of the Aubrey cliffs, marking the approximate boundary between Walapai and Havasupai." [*F. B. Kniffen, Geography, in Walapai Ethnography, p. 38.*]

"A diversity of opinion exists among the various tribes of the Indian Territory by reason of the projected roads north and south and east and west through that Territory. Other roads in the South, aiming to reach the Pacific, will, of necessity, pass through immense tracts of Indian country, or country claimed by them." [*Annual Report of Commissioner of Indian Affairs, 1870, pp. 10–11.*]

"* * * I can but express what is so apparent, and what has heretofore been seen and recommended in communications to and from this office, the propriety and necessity of there being some treaty arrangements entered into with tribes in New Mexico, Arizona, Nevada, and Washington Territories, having no treaty relations with the government especially with those tribes inhabiting or claiming rich agricultural districts or mining regions, in order that their rights may be determined and secured, peace relations established, and proper measures adopted for their civilization, and, at the same time, the rights of settlers protected, and desirable wastes of country opened for occupancy and improvement by citizens. The tribes in these Territories, as well as others, have long roamed free and uncontrolled over the countries they occupy, which they claim as their own, and it is not surprising they regard with jealousy and bitterness of spirit the encroachments of the whites, who, in many instances, not only ignore their rights but treat them with contempt, and despoil them of life and property." [*Annual Report of Commissioner of Indian Affairs, 1868, p. 6.*]

"The Huallapais, a tribe whose country lies East, North, and South of the Mojave and Prescott road, and who have given the whites a great deal of trouble for the past three years, are now inclined to be peaceable." [*Letter of Brevet Major*

General Frank Wheaton to Brevet Colonel George L. Andrews, Superintendent of Indian Affairs for Arizona, dated December 8, 1869, Indian Office File.[5]]

IV. ADMINISTRATIVE AND HISTORICAL MATERIAL TENDING TO SHOW THAT ONLY A PART OF THE WALAPAI TRIBE WAS TEMPORARILY REMOVED TO THE COLORADO RIVER RESERVATION

A. ABSENCE OF WALAPAI FROM RESERVATION PRIOR TO 1874

"* * * At present there are no Indians on the reservation." [*Letter of John Feudge, Special U. S. Indian Agent, Colorado River Indians, to Commissioner of Indian Affairs, dated April 14, 1866, Indian Office File.*]

"It is much to be regretted that Congress has not made the necessary appropriations for the Indian service in Arizona, according to the estimates prepared by this Office, although every possible effort was made by the Department, in repeated communications upon the subject. But such being the case, and the whole appropriation for the current year being limited to $25,000, you will

[5] Other references to the Walapai country are to be found in the report of Major J. M. Schofield to the Assistant Adjutant General, dated September 20, 1875, contained in the Report of the Secretary of War for 1875, at pp. 118 to 121; the report of Colonel August V. Kautz to the Assistant Adjutant General, dated August 31, 1875, *ibid.*, p. 131; the letter of Inspector General James A. Hardie to Major General J. M. Schofield, dated May 8, 1875; report of Colonel O. B. Willcox to Assistant Adjutant General, dated September 13, 1878, in Report of Secretary of War for 1878, p. 194.

perceive the necessity of limiting your expenditures accordingly. All projects, therefore, of concentrating the Indians upon reservations, which involve any expenditure beyond the means at the disposal of the Department, must be avoided; and the same caution must be exercised in regard to all other expenses of the service." [*Letter of Commissioner of Indian Affairs to Geo. W. Leihy, Superintendent, Indian Affairs, La Paz, Arizona, dated August 18, 1866, Indian Office File.*]

"*Arizona.*—* * * Plans to colonize the tribes known as the River Indians, the Yavapais, Hualapais, &c., upon a reservation on the Colorado river, set apart for them by Congress two years ago, have been considered and presented to the department, but for want of necessary funds nothing of a permanent character has been done. * * *" [*Letter of Assistant Adjutant General John P. Sherburne to Brevet Brigadier General J. I. Gregg, dated May 18, 1867, Indian Office File.*]

"*Colorado River reservation,* selected in 1864, stretching on the river from Corner Rock to Halfway Bend, is estimated to contain seventy-five thousand acres of public domain, and upon which it was proposed to colonize about ten thousand Indians of various tribes * * *. The great desideratum, water for irrigating the land, when not supplied by an overflow of the river, was needed. This is sought to be furnished by means

of an acequia or canal, which has not yet been completed, either because of its magnitude and unavoidable obstacles, or want of funds to carry on the work continuously for any great length of time. * * * Superintendent George L. Andrews, Brevet Colonel, United States Army, reports the condition of affairs to be unfavorable at the time of his visit to the reservation lately; only about eight hundred Mohaves were there, and but forty acres in cultivation. * * * He is of the opinion that when the canal is completed many who are now outside will go upon the reservation. There are four tribes in the agency, inhabiting the country along the Colorado River from Fort Yuma to the northern boundary of the Territory: The Yumas, numbering two thousand; Yavapais or Apache Mohaves, two thousand; Mohaves four thousand; and Hualapais, fifteen thousand; all of whom are now peaceable." [*From Annual Report of Commissioner of Indian Affairs, 1869, p. 19.*]

"I have the honor to report, there is nothing on file in this office or in the office of the Agent relating to the establishment of the Colorado River Reservation." [*Letter from Superintendent of Indian Affairs for Arizona, Geo. S. Andrews, to Commissioner of Indian Affairs, dated May 11, 1870, Indian Office File.*][6]

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[6] And see receipts for distribution of goods on the Colorado River Reservation, dated March 31, 1866, and January 12, 1868, signed by Indians other than Walapais (Indian Office File). See also letter of Indian Agent Helenus Dodt,

B. INCOMPLETENESS OF FORCED REMOVAL

"Since my last annual report the Hualpais have been placed under my charge. This people range through the country north and east of the Mohaves. Their strength has been variously estimated at from 1,200 to 1,600, but the number fed at Camp Beales Springs, where they have been collected during the year past, has not averaged more than 600. It is my intention to remove them to this reservation in October next, where they can be fed with less expense to the Government." [*Report of J. A. Tonner, Indian Agent for Colorado River Reservation, dated August 30, 1873, in Annual Report of Commissioner of Indian Affairs, 1873, p. 284.*][7]

"The Hualpai Indians, numbering 580, came to the reserve in the spring, escorted by one white man. * * *" [*Annual Report of Commissioner of Indian Affairs, 1874, p. 289.*]

Indian Agent for the Colorado River Reservation, to G. L. Andrews, Superintendent of Indian Affairs for Arizona, dated October 18, 1869, indicating presence of Mohave and Yavapai Indians on Colorado River Reservation, in Indian Office File.

[7] Other estimates of the Walapai population are: 1,500 (report of John Feudge, Special U. S. Indian Agent, Colorado River Agency, August 1, 1869, to Commissioner; Annual Report of Commissioner of Indian Affairs, 1869, p. 213); 1,500 or 2,000 (letter of Charles D. Poston, Indian Agent, to Commissioner of Indian Affairs, April 10, 1863, in Indian Office File); 1,500 in 1867 (letter of Lieutenant Colonel William Redwood Price to Assistant Adjutant General, Department of Arizona, dated July 1, 1881, in Indian Office File).

"That it is premature to claim this removal as a decided success, it is only necessary to review the history of the removal of the Hualpai Indians. It will be remembered that these Indians were forced to go to the Colorado reservation, against the recommendation and advice of General Crook, by the troops. They went, but made conditions that they should be separated from the Mohave Indians and should have Captain Byrne, with his company, stationed with them to protect them and supervise the issue of rations to them. This was an objectionable feature to the Indian agent in charge; but they were, nevertheless, located on the southern boundary of the reservation at La Paz, and remained there a little over one year under special arrangements made between General Crook and the agent. On the day that General Crook left these headquarters, I received a communication from the commanding officer at La Paz informing me that the issues had been discontinued by the agent at that point, and that the Indians had been informed that they must come to the agency, forty miles above, for their rations; that the Indians had gone, and that the troops were no longer needed at La Paz. This movement was a violation of a verbal agreement between General Crook, the agent, and the Indians.

"On the 21st of April I received a dispatch from Indian Agent Tonner, of the Colorado reservation,

informing me that the Hualpai Indians had left their reservation and gone in the direction of Beale's Springs, their old home, and requesting that I send cavalry in pursuit. Owing to the movements of the Fifth Cavalry, it was not convenient to pursue them, even had I thought such a course advisable. Soon after, Agent Tonner arrived in person, and, upon a consultation with him, I learned that the Indians had left in a peaceable manner, had disclaimed all hostile intentions, and that they were accessible to communication by the Indian Department without danger. I suggested that a display of troops would drive the Indians to their strongholds, and perhaps endanger the lives of the inhabitants that were mining or had settled in the Hualpai country, and that his best plan was to interview them and ascertain their wishes, and represent the case to his Department. This was agreed to, and he withdrew his application for troops. The matter was fully reported, at the time, through the regular channels, to the War Department.

"The Hualpais have remained friendly, although many miners and settlers are occupying their country, with whom they are in daily contact. I do not apprehend that this will last, and suggest that some portion of their own country on its northern boundary, remote from the settled portions, be set aside for them as their reservation. * * *" [*Report of Colonel August V.*

Kautz, commanding officer of the Upper Colorado District, to Assistant Adjutant General, dated August 31, 1875. Annual Report of Secretary of War, 1875, p. 131. W. P., p. 113.]

"* * * The Hualpais are mountain Indians and will not live in the torrid valley of the Rio Colorado below Fort Mojave, where the Interior Department once placed them. On the 4th of July, 1873, at 5 P. M., I observed the thermometer; it indicated 118° F. in the shade and 148° in the sun after an exposure of two minutes. The Hualpais can't stand such heat and will not." [*Report of John G. Bourke, Captain, 3d Cavalry, on Hualpai Reservation, May 22, 1886.* W. P., p. 152.]

"For several years the Hualapais Indians roamed unmolested among the mountains of Northwestern Arizona, in the vicinity of Camp Beale Springs, and subsisted themselves in the Indian way. But in 1873, when it was represented that they were on one of the principal lines of travel, and that mining camps were springing up all around them, it was recommended, by both civil and military officers, that they be removed from that section and located upon some reservation. Accordingly, in the spring of 1874, 580 of them were removed to the Colorado River Reserve, and there regularly rationed. Partly on account of their dissatisfaction with the location, and partly owing to their unwillingness to submit to the require-

ment that they should labor for a portion of the ration, they left the reservation the following spring, and returned to their old haunts; and the agent reported that, in consultation with the commanding officer of the department, it had been decided to allow them to remain there during good behavior." [*Annual Report of Commissioner of Indian Affairs, 1881, p. XLV.* W. P., p. 131.]

"The Hualapais remain in their ancient country, which, however, is being settled by the whites, miners, and ranchmen, among whom the feeling is growing that these Indians should be removed." [*Report of Colonel O. B. Willcox to Assistant Adjutant General, dated September 13, 1878. Annual Report of Secretary of War, 1878, p. 194.* W. P., p. 117.]

V. ADMINISTRATIVE AND HISTORICAL MATERIAL TENDING TO SHOW THAT ONLY A PART OF THE WALAPAI TRIBE HAS EVER INHABITED THE WALAPAI RESERVATION

"In 1884, Gen. Crook reported: 'The reservation now set apart for them is not adapted to their needs, etc.'

* * * * *

"In 1888 Lieut. Col. C. M. Brayton reported:

'I consider the present Hualapai reservation entirely valueless as a home for Indians, a place where white men cannot earn a living and certainly Indians cannot. There are but few Indians living on the reservation.'"

* * * * *

[*Report of Supt. S. M. McCowan to Commissioner of Indian Affairs, dated November 22, 1895.*]

"From 'Peach Springs' I went to Kingman at or near which point the majority of the Hualpai tribe lives." [*Letter dated December 9, 1889, at Colton, California, from Special Indian Agent Frank D. Lewis, to Commissioner of Indian Affairs. Indian Office Archives, E 36036–1889.*]

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[8] And note "Memorandum of number of Hualpai Indians, names of places where they live, and how employed, with names of chiefs and number in each band" submitted by Lieut. Col. Brayton on June 8, 1888 (Walapai Papers, pp. 165–168), identifying 646 Walapai Indians, of whom 553 were ascertained to live outside the reservation. And see estimate of Col. J. S. Mason, at pp. 36–37, *supra*.

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